IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

Crl.L.P..No. 204 of 2007()

ST.9/2005 of J.M.F.C.-IV, KOCHI-5 (ADDL.MUNSIFF, KOCHI)

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: PETITIONER/COMPLAINANT

ARUNKUMAR.A.H., S/O.A.S.HARINDRANATHAN,
SANTHI NIVAS, CHULLIKKAL, COCHIN- 682 005.

BY ADV. SRI.M.RAMESH CHANDER
SRI.V.TEKCHAND

RESPONDENTS: & STATE

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1. A.B.SIYAD, S/O.A.H.BAVA, H.NO.11/842,
C.D.CANAL ROAD, FORT KOCHI, KOCHI- 682 001.

2. STATE OF KERALA REP. BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI P.RAVINDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.No.204 of 2007

DT. MARCH 30, 2007

ORDER

This is a petition for special leave to appeal against the judgment in S.T.No.9/2005 on the file of the Judicial Magistrate of First Class Court No.IV, Kochi-5. As per the complaint filed by the appellant/complainant it is alleged that the 1st respondent had issued a cheque for an amount of Rs.24998/- in discharge of the above amount as owed by him to the appellant/complainant. But when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the respondent. On receipt of the intimation of dishonour from the bank, the appellant/complainant issued Ext.P4 lawyer's notice to the respondent demanding him to pay the amount covered by the cheque. But even after receipt of Ext.P4, the amount has not been paid. Hence the complaint has been filed before the court. To prove the case the appellant examined himself as P.W.1 and produced Exts.P1 to P4. On closing the evidence of the appellant/complainant, the respondent was questioned under sec.313 of the Code of Criminal Procedure. The stand taken by the respondent in his statement under sec.313 Cr.P.C. is that the cheque in question was not issued in discharge of any legally enforceable debt, but it was issued on the basis of the threat made by the appellant and also on the intervention of the Sub Inspector of Police concerned. Further, to prove this case the respondent himself was examined as DW.1 and also relied on Ext.D1 agreement. After considering the entire case, the trial court found that the

appellant/complainant failed to prove that the respondent had issued Ext.P1 cheque in discharge of a legally enforceable debt whereas the same was issued on the intervention of the Sub Inspector of Police. Hence the respondent was acquitted by the court below. The learned counsel appearing for the appellant/complainant submits that there was an agreement between the appellant and the respondent during November 2002 and as per the agreement the respondent owed more than Rs.36000/- to the appellant and as the amount has not been paid, the appellant/complainant himself had filed a complaint before the Sub Inspector of Police, Mattancherry and in the light of the above complaint the respondent was called upon by the police and at the police station the cheque in question was issued in favour of the appellant. On considering the above aspect the trial court categorically held that there was no proof to show that the cheque in question was issued on acceptance of any consideration and in discharge of any legally enforceable debt except that of an agreement. As Ext.D1 agreement is not denied by the complainant, it is clear that for the issuance of the cheque no consideration has been passed on to the respondent and the transaction which led to the issuance of Ext.P1 did not prove any transaction which would attract an interference under sec.138 of the Negotiable Instruments Act. In the above circusmtances this court see that the judgment of the trial court is perfectly justified. Accordingly this special leave petition is dismissed.

K.THANKAPPAN, JUDGE.

mt/-